

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Village of Port Chester
10 Pearl Street
Westchester, New York 10573

SPDES Permit No. NYR20A309

Respondent

Administrative Order for Compliance
pursuant to Sections 309(a) of the Clean
Water Act, 33 U.S.C. § 1319

ADMINISTRATIVE ORDER

CWA-02-2010-3048



STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance ("Order") are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311 (a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to all applicable requirements of the CWA, and regulations promulgated there under, as expressed in the specific terms and conditions prescribed in the applicable permit. Regulations implementing the NPDES permit program under the CWA include, but are not limited to, 40 CFR Parts 122 and 403.
3. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) (2) (D) of the CWA, 33 U.S.C. § 1342(p) (2) (D), requires an NPDES permit to be issued for the discharge of storm water from a Municipal Separate Storm Sewer ("MS4") serving populations of 100,000 or more but less than 250,000.

4. Section 402(p)(3)(B), 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from a MS4 shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers and shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

5. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for storm water discharges, including the following:

- a. 40 C.F.R. §§ 122.26(a)(1)(iv) and 122.26(d) require the operator of a discharge from a medium MS4 to apply for a jurisdiction-wide or system-wide permit;
- b. 40 C.F.R. § 122.26(b)(7)(i) defines "medium municipal separate storm sewer system," in part, as being located in an incorporated place with a population of 100,000 or more but less than 250,000; and
- c. 40 C.F.R. § 122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" municipal separate storm sewer systems;
- d. 40 C.F.R. § 122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.

6. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-08-002) ("Permit") on April 15, 2008. The permit became effective on May 1, 2008 and expires on April 30, 2010. The permit supersedes the previous SPDES permit (GP-02-02), which was effective on January 8, 2003 and expired on January 8, 2008. The previous permit was administratively extended until April 15, 2008, when SPDES GP-0-08-002 was issued. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) and became effective on May 1, 2010 and expires on April 30, 2015. The permit supersedes the previous SPDES permit (GP-0-08-002).

FINDINGS

1. The Village of Port Chester is a municipal corporation chartered under the laws of the State of New York, and as such, the Permittee is a "person," as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an "incorporated place" as that term is defined in 40 C.F.R. § 122.26(b)(3).

2. At all times relevant to this Order, Permittee owned or operated the Municipal Separate Storm Sewer ("MS4"), located within the corporate boundary of the Village of Port Chester, Westchester County, New York and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the MS4 was a "point source" of a "discharge" of "pollutants," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. The MS4 discharges storm water to

receiving waters of all areas, except agricultural lands, within the corporate boundaries of the Village of Port Chester, served by a MS4 owned or operated by Permittee. The Long Island Sound and other receiving waters are considered "waters of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. The Village of Port Chester applied for and was issued SPDES Permit NYR20A309 for the MS4 ("the MS4 permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). An MS4 General Permit was issued by NYSDEC on April 3, 2003, expired April 3, 2008, and was administratively extended until the issuance of a new general permit on May 1, 2008. At all relevant times, the Village of Port Chester was authorized to discharge from all portions of the MS4 owned or operated by the Village of Port Chester to waters of the United States, only in accordance with Permittee's Storm Water Management Program, specific terms and conditions of the MS4 permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26.

5. The Village of Port Chester MS4 discharges storm water into one or more receiving waters that appear on the 303(d) list or for which a Total Maximum Daily Load ("TMDL") has been established. Port Chester Harbor has been designated as an impaired water body with floatables and pathogens the primary pollutants of concern. Therefore, Port Chester is required to meet additional improvement and minimum control measures pursuant to Part IX C. Pathogen Impaired Watershed MS4 for New York State's General Permit for Stormwater Discharges from MS4s (GP-0-10-002).

6. The NYSDEC GP-0-10-002 SPDES General Permit for Storm Water Dischargers from MS4 includes all municipal separate storm sewers within the meaning of 40 C.F.R. § 122.26(b)(16).

7. The New York State Department of Environmental Conservation required that Permittees fully implement a Storm Water Management Program ("SWMP") by January 8, 2008. Permittees under GP-02-02 were required to develop, implement and enforce a program to detect and eliminate illicit discharges under Illicit Discharge Detection and Elimination (Part IV.3 of the permit). The Village of Port Chester developed an initial Storm Water Management Program (SWMP) prior to March 10, 2003 but failed to fully implement the plan by January 8, 2008 deadline, and implement a SWMP ensuring that future discharges do not contribute to a violation of applicable water quality standards.

8. Both GP-02-02 and GP-08-002 expired on January 8, 2008 and April 30, 2010, respectively. The Village of Port Chester is required to continue permit coverage under GP-0-10-002, which became effective May 1, 2010 and expires April 30, 2015. In accordance with Part IV.D., covered entities authorized under GP-0-08-002 shall continue to fully implement their SWMP, unless otherwise stated.

9. Appendix 2 of the New York State SPDES General Permit for Stormwater Discharge from MS4 identified Port Chester Harbor as an impaired water-body for pathogens. The Village of Port Chester MS4 discharges to Port Chester Harbor contribute to violations of applicable water quality standards for pathogens, a pollutant of concern.

10. The Village of Port Chester has initiated work as part of a Byram River Bacterial Trackdown-Remediated Sources of Contamination in March 8, 2004 to undertake a sewage discharge investigation and correction program and has implemented an Illicit Discharge Detection and Elimination program. The Village of Port Chester commenced inspections of a portion of the storm system to identify and eliminate sources of pathogens contributing to water quality impairments, but the entire Port Chester storm sewer system has not been evaluated. EPA has determined, through sampling, that portions of the stormwater system do not meet water quality standards for its designated uses, coliform levels exceed NY State water quality standards in areas of the system, and dry weather overflows have been documented for the New York portions of the Byram River.

11. The Village of Port Chester failed to develop, implement, and enforce, and effectively prohibit, illicit discharges into the storm sewer system and implement appropriate enforcement procedures as required under NYSDEC SPDES General Permit's GP-02-02, GP-0-08-002, and GP-0-10-002, the current New York State Department of Environmental Protection SPDES General Permit for Stormwater Discharges from MS4s.

12. Part VII.A.3.g of the Permit requires the permittee to develop and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4. The program must include: procedures for identifying priority areas of concern (geographic, audiences or otherwise) for IDDE program; description of priority areas of concern, available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions.

13. On June 27 and August 8, 2007, EPA conducted MS4 compliance inspections of the Village of Port Chester, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318 (hereafter the "MS4 inspection"). Based on these inspections EPA identified discharges from the MS4 which appeared to contain sanitary sewage. As a result of those observations, it was determined that a follow-up sampling inspection should be performed.

14. On June 4, 2008, and April 3, 2009, EPA conducted wet weather sampling inspections at outfalls within the Village of Port Chester specifically sampling for fecal coliform and total coliform. The results of that sampling were used to determine whether storm sewer discharges were contributing to water quality impairments and to determine if coliform levels in the storm sewer discharges are substantially higher than water quality standards or ambient levels. Sampling verified that outfalls at the locations identified were discharging in excess of the NY Water Quality Standard of either 10,000 MPN /100ml for total coliform, and/or 2,000 MPN /100ml for fecal coliform.

15. The result of EPA's sampling locations are listed below:

<u>Location</u>	June 4, 2008 Sampling	
	<u>Fecal</u>	<u>Coliform (MPN/100ml)</u>
		<u>Total</u>
Purdy Avenue outfall near Westmore Fuel Co.	240,000 MPN/100ml	240,000 MPN/100ml
E. Broadway catch basin under train tressel	500,000 MPN/100ml	1,600,000 MPN/100ml

Midland Ave. & Slater Street catch basin	17,000 MPN/100ml	240,000 MPN/100ml
Midland Ave. & S. Main Street catch basin	13,000 MPN/100ml	170,000 MPN/100ml
Boston Post Rd. catch basin (drains to Purdy outfall)	3,000 MPN/100ml	17,000 MPN/100ml

April 3, 2009 Sampling

<u>Location</u>	<u>Coliform (MPN/100ml)</u>	
	<u>Fecal</u>	<u>Total</u>
Buckley Outfall (Westchester Avenue outfall)	17,000 MPN/100ml	50,000 MPN/100ml
Purdy Avenue outfall (Westmoreland Fuel)	7,000 MPN/100ml	22,000 MPN/100ml
East Broadway (under train tressel)	13,000 MPN/100ml	17,000 MPN/100ml
Midland Ave & Fawcett St. (Gulf station)	1,100 MPN/100ml	2,200 MPN/100ml
Midland Ave & Slater St (Red's Garage)	24,000 MPN/100ml	70,000 MPN/100ml
Don Bosco Place/Waterfront Place	5,000 MPN/100ml	13,000 MPN/100ml
Midland Ave & S. Main (Brisa Marina)	50,000 MPN/100ml	50,000 MPN/100ml
Highland Street & Marvin Place	800 MPN/100ml	1,700 MPN/100ml
Adee St & N. main (Misti Café)	2,200 MPN/100ml	13,000 MPN/100ml
Buckley Outfall (drain pipe)	5,000 MPN/100ml	28,000 MPN/100ml
331 N. Main St. (Marvel Mystery Oil parking lot)	35,000 MPN/100ml	80,000 MPN/100ml

16. The samplings conducted by EPA on June 4, 2008, and April 3, 2009 supported a finding that there is a high potential for illicit sanitary connections to storm sewers which discharge into Port Chester Harbor.

17. Based upon the field observations conducted by EPA in June 27 and August 8, 2007, sampling inspections conducted in June 4, 2008, and April 3, 2009, EPA determined that the Village of Port Chester was in noncompliance with the MS4 permit by failing to fully implement a comprehensive illicit detection and elimination program required by NYSDEC, by January 8, 2008, as part of their SWMP.

18. On July 31, 2009 EPA issued to the Village of Port Chester Administrative Order CWA-02-2009-3060, as well as a copy of EPA's April 3, 2009 Wet Weather Compliance Sampling Inspection Report. The Village acknowledged receipt of the Order and documents on August 6, 2009.

19. Village of Port Chester's failure to comply fully with the requirements of the MS4 permit, are violations of Section 301 (a) of the CWA, 33 U.S.C. § 1301(a), and a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. The Village of Port Chester failed to implement paragraphs f. (prohibit illicit discharges into the MS4) and g. (develop and implement a program to detect and address non-stormwater discharges).

20. In consideration of the above Findings, and pursuant to the provisions of Sections 308 and 309(a) of the CWA, 33 U.S.C. § 1318 and § 1319(a), EPA has determined that compliance with the following requirements is reasonable.

ORDERED PROVISIONS

1. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Permittee is hereby ORDERED to take the actions described below.
2. Immediately upon receipt of the original copies of this Order, a responsible official of the Village of Port Chester shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.
3. The Village of Port Chester shall prepare, implement and enforce a Stormwater Management Program pursuant to the requirements of Part IV of the NY State DEC SPDES General Permit for Stormwater Discharges from MS4 (GP-0-10-002). The Stormwater Management Program shall specifically address the identification of illicit connections to minimize discharges and sources of pathogens in the Port Chester storm system.
4. The Village of Port Chester shall continue to conduct its track down program to identify and eliminate illicit connections and other potential sources of pathogens to the MS4.
5. The Village of Port Chester shall implement the Engineering Plan in accordance with the following schedule:

<u>Item</u>	<u>To be completed no later than</u>
Prepare contract plans, specifications, and bid documents, award contract to lowest bidder.	July 14, 2010
Complete all smoke and dye testing in areas where video inspection indicated a problem.	December 31, 2010
Complete all work necessary pursuant to the Plan to eliminate illicit sanitary connections to the Village of Port Chester's storm water system.	July 31, 2011
Complete outfall sampling to verify elimination of illicit sanitary connections to storm sewer system.	January 31, 2012
Submit quarterly progress reports to EPA and NYSDEC outlining all activities undertaken, results of verification sampling and costs associated with compliance with this Order.	September 30, 2010, December 31, 2010, March 31, 2011, June 30, 2011, September 30, 2011, December 31, 2011
Submit final report to EPA and NYSDEC summarizing all activities taken to come into compliance.	March 31, 2012

6. Any documents to be submitted by the Village of Port Chester as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. The Village of Port Chester shall continue to submit all reports required by the SPDES General Permit for Storm Water Discharges from MS4.

8. All information required to be submitted by this Order shall be sent by certified mail or its equivalent to the following addresses:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

Joseph DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

Compliance with the terms of this Order shall not relieve Permittee of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the CWA.

This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: AUGUST 5, 2010

Signed: _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Village of Port Chester
10 Pearl Street
Westchester, New York 10573

SPDES Permit No. NYR20A309

Respondent

Administrative Order for Compliance pursuant
to Sections 309(a) of the Clean Water Act, 33
U.S.C. §1319

ADMINISTRATIVE ORDER

CWA-02-2010-3048

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, Christopher J. Russo, an official of Village of Port Chester

with the title of, Village Manager, do hereby acknowledge the receipt of copy of the
ADMINISTRATIVE ORDER, Village of Port Chester CWA-02-2010-3048.

DATE: 8/13/10

SIGNED: Christopher J. Russo